

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAVID BENNETT,
Plaintiff,

v.

PROP. 47 PUBLIC DEFENDER, et al.,
Defendants.

Case No. 19-08166 BLF (PR)

**ORDER LIFTING STAY; DENYING
MOTION FOR APPOINTMENT OF
GUARDIAN AD LITEM;
DIRECTING PLAINTIFF TO FILE
AMENDED COMPLAINT**

(Docket No. 15)

Plaintiff, a California inmate, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983, seeking money damages for unlawful confinement. Dkt. No. 1. The Court referred this matter to the Federal Pro Se Program to find counsel for the limited purpose of conducting a competency hearing because there was a substantial questions regarding his mental incompetence based on an order from the Superior Court of Butte County finding him incompetent to stand trial. Dkt. No. 16. The Court found this document triggered its duty was inquiry under Rule 17(c) of the Federal Rules of Civil Procedure. *Id.*

It has come to the Court's attention that Plaintiff's criminal proceedings in Butte County Superior Court have been reinstated by a minute order dated December 23, 2020,

after a mental competence hearing. *See In the Matter of David Hill Bennett*, Case No. 20CF01767-1.¹ The fact that criminal proceedings are reinstated indicates that Plaintiff has been restored to competency. Accordingly, the Court finds there is no longer a substantial question regarding Plaintiff's competency, and therefore no need to hold a hearing in that regard. Therefore, the referral to the Federal Pro Se Program is hereby withdrawn. Plaintiff's motion for appointment of conservator/guardian *ad litem* is DENIED. Plaintiff shall continue in *pro se* in this matter and file an amended complaint in the time set forth below.

CONCLUSION

For the reasons state above, the Court orders as follows:

1. Within **forty-five (45) days** from the date this order is filed, Plaintiff shall file an amended complaint using the court's form complaint to attempt to remedy the deficiencies discussed in the Court's Order of Dismissal with Leave to Amend. Dkt. No. 7. The amended complaint must include the caption and civil case number used in this order, i.e., Case No. C 19-08166 BLF (PR), and the words "AMENDED COMPLAINT" on the first page. Plaintiff must answer all the questions on the form in order for the action to proceed. Plaintiff is reminded that the amended complaint supersedes the original, and Plaintiff may not make references to the original complaint. Claims not included in the amended complaint are no longer claims and defendants not named in an amended complaint are no longer defendants. *See Ferdik v. Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).

Failure to respond in accordance with this order by filing an amended complaint in accordance with the above in the time provided will result in the

¹ The docket for Mr. Bennett's criminal proceedings can be found at the website for the Butte County Superior Court.
<https://cabutteodyprod.tylerhost.net/Portal/Home/WorkspaceMode?p=0>

dismissal of this action without prejudice and without further notice to Plaintiff.

2. The Clerk shall include two court form complaints and a copy of the Court's Order of Dismissal with Leave to Amend, Dkt. No. 7, along with a copy of this order to Plaintiff.

The stay of this matter is hereby **LIFTED**.

IT IS SO ORDERED

Dated: January 26, 2021



BETH LABSON FREEMAN
United States District Judge

United States District Court
Northern District of California

Order Lifting Stay; Deny Appt; Am. Compl. Due
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